Abby—and his 10 children and grandchildren for ''sharing'' him with Congress and the Nation for a public service career spanning half a century. Senator BLUNT has made his mark, and we are all better for it.

HORSERACING INTEGRITY AND SAFETY ACT

Mr. GRASSLEY. Madam President, in the early hours of Tuesday morning, we were given the text to the omnibus appropriations bill. With the end of the year fast approaching, everyone is trying to get this bill signed into law quickly. That is true even if it has not been fully reviewed and every consequence thought out.

We saw this 2 years ago, when the omnibus was included with COVID-relief funding, within the 2020 omnibus was the Horseracing Integrity and Safety Act.

Prior to this 2020 act becoming law, with no process and no opportunity to debate the merits of the act, horseracing was regulated by States, and Congress had no role on how the industry was regulated.

What this 2020 bill did was impose a one-size-fits-all Federal regulatory approach on all States, from Iowa to Kentucky, to West Virginia, to New York. This is a bill that had never gone through the committee process, but it managed to end up in the omnibus.

As a result of this hasty lawmaking, last month, we saw the Fifth Circuit Court of Appeals strike down the law on the grounds that the act is unconstitutional. Regular order in the Senate, especially through committee process, would have prevented this unconstitutional language.

This did not come as a surprise. It was clear that the private nonprofit Horseracing Authority created in the 2020 omni wielded nearly unlimited Federal rulemaking authority and answered to no one, not even the President of the United States.

The court ruled that the power of the Federal Government can be wielded only by the Federal Government, not private entities like the ''Authority.''

For months I have worked with horsemen in Iowa and my colleagues in the Senate to address the obvious failures with implementation of this law since it went into effect earlier this year.

I specifically asked the FTC about the extent of its oversight of the FTC, a key factor for the Fifth Circuit's ruling.

The FTC response was simple. It said it did not have any oversight over the ''Authority.'' This is clearly unconstitutional and is inconsistent with conservative principles of small government and reigning in the Federal bureaucracy.

Now that the courts have found HISA unconstitutional, Congress should work a fix through the regular committee process to avoid the pitfalls of the previous legislation.

But that is not what is happening today. In the 2022 omni once again, the special interests that invented the unconstitutional ''Authority'' in the first place have convinced their supporters a quick fix is needed in this omnibus. The same people who pushed the unconstitutional ''Authority'' through in an end of year omnibus are once again forcing legislation without any input from Senators like me.

This fix to the unconstitutional Federal rulemaking power wielded by the ''Authority'' is included on page 1,930. How many members of Congress even know that this is included? Probably very few.

I have since introduced an amendment that would strike this text with Senator MANCHIN. Since then numerous offices reached out to find out what this is—and once they do—have expressed the same opposition to this becoming law that I have.

This is just one example of which there are many, of legislating on an omnibus. It lets a select few Members, or in this case just one Member, of leadership create new Federal regulatory frameworks for entire industries.

I support ensuring safe, humane horseracing. But I also support small tracks, like Prairie Meadows in Iowa, which don't have the billionaires backing like those in States that host Triple Crown races.

And I am not alone because most other States have tracks like Prairie Meadows.

Instead of governing this way, Congress should work with State racing commissions to regulate horseracing in a responsible way to ensure racetrack safety and the economic viability of small tracks across the country.

I will work with any Senator who is willing to stand up for small tracks in the next Congress and fix this broken way of governing.

ELECTORAL COUNT REFORM AND PRESIDENTIAL TRANSITION IMPROVEMENT ACT

Ms. COLLINS. Madam President, the Consolidated Appropriations Act of Fiscal Year 2023 includes the reforms of the Electoral Count Reform and Presidential Transition Improvement Act, a bill I coauthored with Senator JOE MANCHIN of West Virginia. This bipartisan legislation has 39 cosponsors, including Senate Leaders CHUCK SCHUMER and MITCH MCCONNELL and Senate Rules Committee Chairman AMY KLOBUCHAR and Ranking Member ROY BLUNT. The bill was favorably reported out of the Senate Rules Committee by a vote of 14–1.

The Electoral Count Reform and Presidential Transition Improvement Act would reform and modernize the outdated Electoral Count Act of 1887 to ensure that electoral votes tallied by Congress accurately reflect each State's vote for President. In addition to my prior remarks about the reforms this bill makes to the Electoral Count Act, it is important that the CONGRESSIONAL RECORD reflect the purposes and intended implementation of these reforms, which were made by a bipartisan working group of Senators led by me and Senator MANCHIN. Our legislation amends title 3, United States Code, to reform the Electoral Count Act of 1887, and amends the Presidential Transition Act of 1963. Title I of the bill, described in the following analysis, contains the Electoral Count Reform Act.

Sec. 101. Short Title. This section designates the name of the bill as the ''Electoral Count Reform Act of 2022.''

Sec. 102. Time for Appointing Electors. This section streamlines section 1 of title 3, United States Code, requiring that the electors of President and Vice President be appointed in each State on election day, in accordance with the laws of the State enacted prior to that date. The phrase ''in accordance with the laws of the State enacted prior to election day'' forecloses any opportunity that a subsequent day could be selected for choosing a State's electors or taking other post hoc actions.

This section also repeals section 2 of title 3, often referred to as the ''failed election'' provision, which states that ''[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.'' The phrase ''failed to make a choice'' is not defined in law. Since its enactment in 1845, this provision has never been used, and it was a source of uncertainty during the Presidential elections of 2000 and 2020. In striking this provision, our legislation ensures that Congress does not authorize any State to declare an election ''failed'' when the outcome is undesirable.

The authors of this bill recognize that there may be exceedingly rare circumstances in which a State may truly be unable to conduct its election on the day designated by law. Such rare circumstances are understood to include catastrophic natural disasters, terrorist attacks, or similar calamities. The definition of election day in the new legislation allows a State to modify the period of voting in a popular election ''as necessitated by force majeure events that are extraordinary and catastrophic, as provided under laws of the State enacted prior to such day.'' Such circumstances are so rare that they have yet to arise in our Nation's history, thus this provision was included with the understanding that such an event requiring its use would be unprecedented in nature.

This provision contains several Federal restrictions: No. 1, the events must be necessitated by force majeure events that are extraordinary and catastrophic, No. 2, the processes for modifying the period of election must be established by the State prior to election

day, No. 3, and the remedy is limited to modifying the period of the election, not delaying or cancelling an election. This provision constrains the discretion of States while also providing flexibility to respond to extraordinary and catastrophic election emergencies. This provision does not permit the legislative appointment of new electors after election day.

Sec. 103. Clarification with Respect to Vacancies in Electoral College. This section clarifies that States may only fill elector vacancies pursuant to laws enacted prior to election day.

Sec. 104. Certificate of Ascertainment of Appointment of Electors. This section updates existing provisions to ensure that Congress can identify a single, conclusive slate of electors submitted by each State in a timely manner.

This section reforms and modernizes sections of the Electoral Count Act to ensure Congress receives timely and accurate certificates of ascertainment for each State. It requires each state's executive to issue a certificate of ascertainment of appointment of electors no later than 6 days before the meeting of electors and to transmit the certificate to the Archivist of the United States and several duplicate-original certificates to the State's appointed electors. Each State's executive must issue a certificate of ascertainment pursuant to the laws of such State. This section maintains that existing duty in the underlying law and reiterates that State executives must issue these certificates pursuant to State law in effect prior to election day.

The reason for this amendment is because the underlying law, section 5 of title 3, establishes a presumption of conclusiveness of a State's appointment of electors if the State meets what has been called the ''safe harbor'' deadline, which is 6 days before the meeting of the electors. This safe harbor provision has never been used by Congress to accomplish its duties under the 12th Amendment. It is an outdated and impracticable provision intended to help resolve a remote scenario in which multiple slates of electors are received from a State.

The Electoral Count Reform and Presidential Transition Act defines ''executive'' of a State to mean ''the Governor of the State . . . except when the laws or constitution of a State in effect as of election day expressly require a different State executive to perform the duties identified'' under the Electoral Count Act. This provision is intended to resolve any ambiguity in the meaning of ''executive'' under current law and to ensure that Congress can identify a single State official with the responsibility for identifying his or her State's electors to Congress. In the absence of unequivocal statutory or constitutional provisions assigning these responsibilities to a different State executive official, enacted prior to election day, the Governor shall have this responsibility.

During bipartisan discussions about this legislation, Senators debated concerns about the prospect that a State's executive might take deliberate actions to controvert or delay the issuance of the certificate of ascertainment required under the Electoral Count Act. That is why this section of the bill provides an expedited process in Federal court for aggrieved Presidential or Vice Presidential candidates to address such an unprecedented action, which could include a State's executive failing to issue or transmit a certificate of ascertainment prior to the specified deadline, or issuing or transmitting a certificate of ascertainment that does not reflect the State's accurate slate of electors.

The venue and expedited procedure provisions specified in subsection 5(d) of the bill do not establish a federal cause of action or provide independent standing or jurisdiction to adjudicate legal claims concerning the certificates of ascertainment. The provisions only provide expedited procedures to resolve Federal claims that may arise under existing law. The scope of these provisions is deliberately narrow, intending only to ensure swift Federal judicial review of the final act of the State in appointing its electors, which is the issuance and transmission of a certificate of ascertainment. Understanding that these provisions are intended to address a narrow and, to date, unprecedented range of circumstances and claims that will require limited, if any, fact finding by the judiciary, this section provides no more than 6 days from the established statutory deadline for the issuance of a certificate of ascertainment to resolve such disputes. More than 6 days may be available to resolve such a claim if a State executive issues a certificate of ascertainment in advance of the statutory deadline, which may be permitted or required under State law and frequently occurs.

A rule of construction ensures that these provisions related to Federal court processes may not be construed to preempt or displace any existing state or federal cause of action. This section therefore does not affect any current process to resolve disputes involving a State's election, such as recounts, election contests, or audits, nor does it restrict any available judicial challenges related to the election under State or Federal law.

Finally, this section requires, for purposes of the counting of electoral votes at the joint session of Congress, that a certificate of ascertainment issued pursuant to this section be treated as conclusive in Congress. If any certificate of ascertainment is required to be issued or revised by State or Federal judicial relief granted prior to the date of the meeting of electors, that certificate shall replace and supersede any other certificates. This is intended to provide clear parameters to Congress for identifying each State's single, conclusive slate of electors, and to ensure each certificate's accuracy.

To further aid in the identification of each State's conclusive certificate of ascertainment, this section adds a requirement that the certificate provided by each State's executive include at least one security feature, as determined by the State. Such features may include raised seals, watermarks, microprinted lines, or other security features in common use on official documents. Pursuant to guidance issued by the Archivist of the United States in advance of Presidential elections, State officials should communicate the security features that the State will use on its certificates of ascertainment in advance to the Archivist.

Sec. 105. Duties of the Archivist. This section amends section 6 of title 3 to restate the duties of the Archivist of the United States with respect to the certificates of ascertainment of appointment of electors received from each State.

Sec. 106. Meeting of Electors. This section establishes the time of the meeting of electors in each State as the first Tuesday after the second Wednesday in December, 1 day later than the date designated in the underling law. Further, it makes technical amendments to section 10 of title 3 to ensure consistency of terms.

Sec. 107. Transmission of Certificates of Votes. This section streamlines the requirements related to the transmittal of electoral votes to various officials, and it requires all of the certificates to be transmitted at the same time.

Sec. 108. Failure of Certificate of Votes to Reach Recipients. This section makes technical and conforming amendments to provisions of the underlying law related to instances when certificates do not reach the intended recipients. This section also repeals the messenger's penalty codified at section 14 of title 3 if the Archivist of the United States does not receive the electoral votes by a specified date.

Sec. 109. Clarifications Relating to Counting Electoral Votes. This section modernizes provisions of section 15 of title 3 related to the counting procedures used by the joint session of Congress.

As amended by the Electoral Count Reform and Presidential Transition and Improvement Act, section 15(b) reaffirms that the role of the President of the Senate in the joint session of Congress is ministerial in nature, and that the President of the Senate has no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment, the validity of electors, or the votes of electors. This provision is not intended to change the role of the President of the Senate at the joint session. Rather, it reaffirms the broad, consensus view of the President of the Senate's role under article II and the 12th Amendment of the U.S. Constitution in the counting of electoral votes by Congress.

The section increases the threshold required to raise an objection to an

elector or slate of electors during the joint session to one-fifth of the Members of the Senate and House of Representatives duly chosen and sworn. This amends the underlying law, which requires only one Member from both chambers to lodge an objection. As amended, this higher threshold mirrors the threshold found in section 5, clause 3 of article I of the Constitution, which requires one-fifth of those present to request that the yeas and nays entered on the Journal of the Chamber. This higher threshold was chosen to ensure that any objection to a State's electors enjoys broad support in Congress, thereby preventing frivolous objections that unnecessarily interrupt Congress' duties. The threshold is also not insurmountably high so as to prevent objections that may warrant further debate and resolution.

The section retains the grounds for objection in the underlying law, which may be made if electors of a State are ''not lawfully certified'' under a proper certificate of ascertainment or if the vote of one or more electors ''has not been regularly given.'' During bipartisan discussion about these grounds, Senators considered whether or not these long-standing grounds were overly vague in light of recent abuses in joint sessions of Congress. The bipartisan group considered that there is historical and constitutional scholarship on the meaning of these phrases, which were better understood when the Electoral Count Act was enacted in 1887.

These grounds for objection were analyzed during a Senate Rules and Administration Committee hearing on August 3, 2022. Professor Derek Muller of the University of Iowa College of Law, who is a national authority on the constitutional history and appropriate reading of the grounds for objections under the Electoral Count Act, testified that the phrase ''not lawfully certified'' limits the objection to ensuring that the requirements of section 5 of the Electoral Count Act have been met.

Professor Muller further testified that ''regularly given'' is understood to limit the scope of the objection, citing his own scholarship and that of other legal schools on the issue. In a law journal article titled ''Electoral Votes Regularly Given'' (55 Ga. L. Rev. 1529 (2021)), Professor Muller noted an academic's view of the meaning of regularly given from 1888: '' . . . the two Houses cannot reject the return on account of fraud or defect in the election of the electors or in the determination of a controversy thereof, but may do so on account of irregular action on the part of the electors themselves in giving their votes for President and Vice-President.'' Thus, regularly given is relatively narrow in scope and generally refers to post-appointment problems or controversies. This could contemplate an instance when an elector cast a vote for a constitutionally ineligible candidate for President or Vice President; an elector cast an electoral vote at the wrong time or in the wrong place; or in the wrong form and manner as specified under law; or the electors' vote is the product of duress, bribery, or corruption.

The other reforms made by this legislation, including increasing the required objection threshold and ensuring a single, conclusive slate of electors in each State subject to State or Federal judicial review, will make it harder for members of Congress to offer frivolous objections.

As amended by this bill, subsection 15(e)(2) of the Electoral Count Act clarifies how many votes constitute the denominator for purposes of determining the majority of electoral votes. The Twelfth Amendment of the U.S. Constitution provides that ''the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed.'' In the rare historical instances in which there has been a problem with or objection to an electoral vote, Congress's past precedent is unclear and contradictory. The provision of the Electoral Count Reform and Presidential Transition Improvement Act states that if a State fails to appoint all of the electors it is entitled to receive, or if it has not validly appointed electors under State law and Congress votes to reject those electoral votes on that basis, then those electors are not ''appointed'' for purposes of the Twelfth Amendment and the denominator is to be reduced.

Sec. 110. Rules Related to Joint Meeting. This section makes technical amendments to section 17 of the Electoral Count Act, including clarifying that when the two Chambers separate to resolve an objection, all objections or other questions raised related to a given State's electors must be addressed within the 2-hour limit and specifies that any appeals or other questions relating to any rulings made by the Presiding Officer at the joint session must be resolved by votes of the two Chambers separately.

Sec. 111. Severability. This section adds severability provisions to the Electoral Count Act should a court rule provisions of the law unconstitutional.

We have before us an historic opportunity to modernize and strengthen our system of certifying and counting the electoral votes for President and Vice President. The events of January 6, 2021, reminded us that nothing is more essential to the survival of a democracy than the orderly transfer of power. There is nothing more essential to the orderly transfer of power than clear rules for effecting it. I am proud that Congress has seized this opportunity to enact these sensible and much-needed reforms.

UNCLAIMED SAVINGS BOND ACT

Mr. WYDEN. Madam President, I would like to make a few points about provisions in the omnibus that are based on the Unclaimed Savings Bond Act. I want to explain why there are changes from the original legislation to the version we are voting on today. The Treasury Department has indicated that they will not always be able to match the serial numbers of the bonds with the names and addresses that Congress is requiring them to provide under this act.

States and other supporters recognize that there may be administrative and fraud prevention problems with releasing serial numbers for unclaimed bonds into the public sphere when there are no other identifying markers on the bonds. That is the only reason that the language concerning the transmission of serial numbers for bonds to the states has changed from ''shall'' to ''may''. The intention is to give the Treasury Department the flexibility they need to prevent fraud, but I fully expect that the Treasury will endeavor to provide the serial numbers to the States, especially when they are associated with names and/or addresses. I believe, for example, that digital copies of the bonds, where they exist should be shared with the States.

Also, as it relates to this set of provisions, I want to clarify the term-of-art of ''paper bond'' in the description of ''applicable savings bonds.'' Paper bonds in this context are not the physical bonds, but rather bonds that were originally issued in that form. The purpose of the Unclaimed Savings Bond Act, incorporated in this bill, is to give the States the ability to find the owners and heirs of these unclaimed savings bonds, and I intend for the Treasury to write their regulations in a manner that respects the States and only limits the transmission of data when there is a tangible risk for fraud or theft or the like.

GAO RULING

Mrs. CAPITO. Madam President, on December 16, 2021, the Deputy Administrator of the Federal Highway Administration issued a memorandum, entitled ''Information: Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America.''

I wrote a letter asking the U.S. Government Accountability Office—GAO—to determine whether this memo was a ''rule'' and subject to the Congressional Review Act, CRA. On December 15, 2022, I received a reply, in which the GAO general counsel concludes that the 2021 memo ''meets the [Administrative Procedure Act] definition of a rule and no exception applies. When an agency rule has the effect of inducing changes to the internal policy or operations choices of the regulated community, that rule has a substantial impact on the rights and obligations of non-agency parties. Thus, the Memo is a rule under CRA and is subject to the submission requirements.''

I ask unanimous consent that the decision from GAO, dated December 15,